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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

ROGER FRAPPIED, Plaintiff and Appellant, v. EDWIN K. NILES, Defendant and Respondent.	B257621 (Los Angeles County Super. Ct. No. LP008351)

APPEAL from an order of the Superior Court of Los Angeles County, Frank J. Johnson and David S. Cunningham III, Judges. Affirmed.

Holland & Knight, Marissa E. Buck and Vince Farhat for Plaintiff and Appellant.

Law Offices of Matthew C. Mickelson and Matthew C. Mickelson for Defendant and Respondent.

INTRODUCTION

Edwin Niles is an attorney whose practice includes probate law. He represented Roger Frappied (Frappied) as administrator of the estate of Frappied's mother, Agnes Frappied. In response to Niles' petition for fees, Frappied stipulated to an order requiring him to pay Niles $25,000 in attorneys' fees in monthly payments of $500, secured by a lien on property in Lebec, California. When Frappied did not pay, Niles asked the court to issue an abstract of judgment for $25,000, and Niles attempted to execute on the Lebec property. Frappied filed a claim of homestead exemption for the property, which Niles opposed on the ground that Frappied did not reside there. The probate court determined that Frappied did not reside at the property and denied his claim of exemption. We conclude that substantial evidence supports the probate court's factual conclusion, defer to the probate court's credibility determinations, and affirm the order denying the homestead claim.

FACTUAL AND PROCEDURAL BACKGROUND

A. The Probate Proceedings

On April 5, 2002 Frappied's mother Agnes Frappied died intestate with Frappied as the sole heir of her estate, which included the property at 812 Louise Way in Lebec, improved with a mobile home. On July 26, 2002 the probate court appointed Frappied, who was representing himself, as administrator of the estate. In September 2003 Niles substituted in to the probate case to represent Frappied. In February 2004 Niles filed a final corrected inventory and appraisal for the estate, listing the Lebec property valued at $35,000, household items worth $1,000, and bank accounts containing $30,590.

Meanwhile, a dispute arose regarding another piece of property Frappied's mother had owned in Canoga Park, California, and had left to her caretaker and close friend, Ardine Vivian. Frappied's ex-wife brought a quiet title claim alleging that she and her two daughters owned that property, and they moved to remove Frappied as administrator. Frappied retained Niles to represent him in this dispute. Vivian eventually settled with Frappied's ex-wife and daughters. Essentially, Vivian got to keep the Canoga Park property by paying the daughters $92,500. Frappied, although a named defendant, was not a party to the settlement and the record does not disclose how Frappied resolved the dispute.

B. The Order for Payment of Attorneys' Fees

In 2008 another dispute arose, this time between Frappied and Niles over attorneys' fees. At the July 24, 2008 hearing on a petition by Niles for fees, the parties, with the assistance of a court mediator, reached a settlement, which the court entered as a written order on August 15, 2008. The court-approved settlement provided that Frappied, as administrator and individually, would pay Niles $25,000 in monthly payments of $500 until paid in full, Niles would quitclaim to Frappied, as administrator of the estate, the property at 812 Louise Way in Lebec, and Niles would transfer to Frappied individually an undivided one-half interest in property at 905 Louise Way in Lebec.[1] The order approving the settlement also placed a lien against the 812 Louise Way property to secure payment of the fees.

Neither side complied with the order promptly. Frappied did not make any payments to Niles, and on September 27, 2011 the court issued an abstract of judgment in favor of Niles in the amount of $25,000. Two years later, on September 26, 2013, Niles conveyed the 812 Louise Way property to Frappied On October 25, 2013, Niles filed a

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[1] It is unclear how Niles obtained title to these properties. The record in this appeal does not reveal how title came to be in his name in the first place.

memorandum of costs after judgment seeking $2,116, including a $2,000 levying officer's fee, plus accrued interest in the amount of $12,986.35.

In 2014 Niles began proceedings with the Kern County Sheriff's Department to levy on the 812 Louise Way property. On March 7, 2014 the Kern County Sheriff levied on the property.

C. The Homestead Exemption Claim

On March 26, 2014 Frappied, representing himself, filed a claim for homestead exemption under Code of Civil Procedure section 704.710, subdivisions (a)(2) and (d),[2] claiming that 812 Louise Way was his personal residence. He also asserted that the actual value of the property was insufficient to satisfy the judgment.

On April 7, 2014 Niles filed a motion for an order denying Frappied's claim of exemption, supported by declarations and photographs of the property taken on April 3, 2014, arguing that Frappied did not reside there. Niles submitted a declaration stating that he had visited the property several times and that the only time he ever saw Frappied at the property was the first time they met "many years ago at the outset of the underlying case." Niles stated that the roof of the mobile home on the property was broken, the property appeared vacant, there was a lock on the fence leading to the property, there were undisturbed leaves on the ground and driveway, and there were abandoned vehicles on the property. Niles also submitted declarations from two neighbors stating that they knew Frappied by sight and rarely saw him around the property except during the few weeks prior to the hearing. Niles also submitted a declaration from his attorney stating that he had conducted a "skip trace" search for Frappied using a data service company that compiles data and information for use by lawyers and private investigators, which showed that Frappied's most recent address was in Los Angeles.

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2 All undesignated statutory references are to the Code of Civil Procedure.

On April 30, 2014 Frappied filed a response to Niles' motion claiming that he resided at the property and paid the property taxes, but that he frequently goes to the Los Angeles area for medical appointments and relies on his caretaker (also Vivian) and friends to take him back and forth from Lebec to Los Angeles. Frappied submitted a letter from Dr. Sonia Krishna, dated March 15, 2011, who wrote that Frappied was "not completely competent to understand the legalities . . . of legal documents. He has had mental health issues and traumatic brain injury for decades now with psychiatric disabilities ranging from cognition, personality, mood, psychosis, and anxiety." Frappied also suggested that the order requiring him to pay Niles violated Rule 3-300 of the California Rules of Professional Conduct.

The court held a hearing on the claim of homestead exemption on May 7, 2014. Frappied, still representing himself, argued that the Lebec property was his residence. He stated: "Well, I just want the court to know that is my residence. I do stay there." Frappied also had in his possession at the hearing declarations from some neighbors and other acquaintances that supported his claim that he lived at the Lebec property and to rebut the evidence submitted by Niles. The court asked Frappied if he had provided the declarations to counsel for Niles, and Frappied stated he had not yet done so because he "was still working on obtaining them." The court stated: "No. We have time limits on when things are filed. And then when you file documents, you have to serve them on the other side. Otherwise, they're deemed as untimely. . . ." The court noted that there were "two different neighbors that submitted declarations" stating that Frappied did not live at the property. After denying Frappied's request for a continuance to "obtain some counsel to assist [him] further with this matter," the trial court denied the claim of homestead exemption and allowed the Kern County Sheriff's Department to proceed with the levy and sale of the property.

On May 19, 2014 Frappied filed a motion pursuant to section 1008 seeking reconsideration of the court's May 7, 2014 order. Frappied sought to introduce new evidence and evidence he had not been able to present at the May 7, 2014 hearing,

including the declarations from neighbors and other letters in support of his claim that he resided at the Lebec property.[3]

At the June 25, 2014 hearing on the motion for reconsideration, Frappied was represented by counsel. The court stated it was going to deny the motion "for failure to provide a satisfactory explanation for why he failed to submit the new declarations at an earlier time, and even aside from that, I still think, substantively, you didn't establish that that was actually the residence to qualify for an exemption." The court further noted that the declarations from neighbors Frappied had submitted "certainly would have been available – I looked at the various dates. Several of them were predated the date of the hearing. . . . And the argument about timeliness on . . . service is just not supported by the facts. So just the position is not supported by what's in the record."

Counsel for Frappied argued that, at the prior hearing, Frappied "was still collecting the declarations from the people. He was going around all of Los Angeles getting them. They were predated, but he was waiting . . . to get the signed copies back . . . and he was pro se." The court stated, however, "aside from that, even the substance of the declarations themselves, I think, are [*sic*] questionable." The court further stated: "And I will tell you, on the record, unfortunately, I don't think that even the additional declarations really cures the residency problem. I looked at them. They're vague. They're not specific to the relevant time. And even if they were, I think they lack the appropriate detail." The court denied the motion for reconsideration.

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[3] One neighbor stated in his declaration: "Roger Frappied is always around and has resided at 812 Louise Way, Lebec, California for many years, I see Roger Frappied often, working in the yard and sometimes in town. [¶] [He] has lived here for the past 4 years at least." Another stated: "I am aware that 812 Louise Way, Lebec, California 93243, is Roger Frappied's residence, and have personally known [him] for many years," and "I see [him] often, working in the yard and sometimes in town. [¶] Roger Frappied has lived here for the past 11 years at least." And another stated: "I have personally known Roger Frappied for over five (5) years. [¶¶]] I have spent a considerable amount of time with [him] at his residence in Lebec and I am aware that [he] has been living out of that residence, and uses it as his home."

Frappied timely appealed.[4] This court granted Frappied's petition for a writ of supersedeas to stay the sale of the property pending appeal.

DISCUSSION

Section 704.740, which governs sale of a dwelling or "homestead" to satisfy a money judgment, "is part of the Enforcement of Judgments Law (§§ 680.010-724.260), a comprehensive scheme governing enforcement of civil judgments in California." (*California Coastal Comm. v. Allen* (2008) 167 Cal.App.4th 322, 326.) Section 704.740 provides that "the interest of a natural person in a dwelling may not be sold under this division to enforce a money judgment except pursuant to a court order for sale obtained under this article and the dwelling exemption shall be determined under this article." Section 704.710, subdivision (c), defines homestead as "the principal dwelling (1) in which the judgment debtor or the judgment debtor's spouse resided on the date the judgment creditor's lien attached to the dwelling, and (2) in which the judgment debtor or the judgment debtor's spouse resided continuously thereafter until the date of the court determination that the dwelling is a homestead." (See *Broadway Foreclosure Investments, LLC v. Tarlesson* (2010) 184 Cal.App.4th 931, 936.) "The homestead exemption applies to a house trailer or mobilehome in which the debtor resides." (11 Miller & Starr, Cal. Real Estate (3d ed. 2013) § 32:24.)

"The question of the validity of the residence of plaintiffs on the premises at the time of the declaration of homestead [is] one of fact to be determined by the trial court and its finding thereon should not be disturbed on appeal if there is substantial evidence to support it." (*Ellsworth v. Marshall* (1961) 196 Cal.App.2d 471, 474.) "[T]he court [is] not bound to accept [the defendant's] testimony as conclusive if the other facts and

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[4] The probate court's order denying Frappied's claim of exemption is appealable under Probate Code section 1303, subdivision (d), and section 703.600.

circumstances [are] inconsistent . . . . In viewing these facts and circumstances we must, in support of the judgment, give them the interpretation given to them by the trial court if such interpretation is reasonable, *even though a different interpretation, favorable to defendant, might also be reasonably given to them*." (*Id*. at pp. 474-475; see *Tromans v. Mahlman* (1896) 111 Cal. 646, 647 [where there is "a conflict of evidence," the trial court's decision on whether the plaintiff resided in a residence for homestead purposes "is conclusive upon this court"].) "The burden of proof that the dwelling is a homestead is on the person who claims that the dwelling is a homestead," unless "the records of the county tax assessor indicate that there is a current homeowner's exemption or disabled veteran's exemption for the dwelling," in which case "the judgment creditor has the burden of proof that the dwelling is not a homestead." (Code Civ. Proc., § 704.780.)[5]

Frappied argues that the probate court failed to consider all of the evidence he submitted in support of his claim of exemption and that the evidence the court did consider was insufficient to support the denial of his claim of homestead exemption. The record, however, does not support Frappied's contentions. Although the probate court initially stated it would not consider the evidence Frappied brought with him to the hearing because it was untimely, the court ultimately did consider it.

At the May 7, 2014 hearing the court stated to Frappied that "the burden of proof is on you to show the property is eligible for [a] claim of exemption. We've got two different neighbors that submitted declarations that contest that, and I don't think you've rebutted that finding." At the June 25, 2014 hearing on Frappied's motion for reconsideration, the court stated: "I still think, substantively, you didn't establish that that was actually the residence to qualify for an exemption. . . . [E]ven the substance of the declarations themselves, I think, are questionable." The court indicated that it found Frappied's declarations less credible because they were vague, not sufficiently specific as

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[5] There is no evidence in the record of any exemption in the records of the county tax assessor regarding the property.

to time, and lacking in detail. The court's statements at the first hearing do reflect some impatience with Frappied's presentation,[6] but the record shows that the court ultimately considered all of Frappied's evidence.

Frappied also argues that "[t]here is not 'substantial evidence' in the record to support the denial of . . . [Frappied's] claim for a homestead exemption." Frappied argues that the probate court made "no determination . . . regarding the identity or reliability of [the] 'neighbors'" who submitted declarations stating Frappied did not reside at the Lebec property, and that the "declarations are not credible and therefore do not constitute substantial evidence."

There was substantial evidence to support the probate court's factual findings. Niles submitted declarations by two individuals who lived on Louise Way and who stated that they knew the neighborhood, they were "aware of the people who come and go on [the] street," they knew Frappied, and they knew he did not live at the Lebec property. Niles also submitted photographs showing that the property appeared neglected if not abandoned, uninhabited if not uninhabitable. And Niles submitted evidence that Frappied lived in Los Angeles, not Lebec. Frappied submitted evidence supporting his position, but the evidence submitted by Niles was reasonable, credible, and of solid value. (See *Carolina Casualty Ins. Co. v. L.M. Ross Law Group, LLP* (2012) 212 Cal.App.4th 1181, 1189, fn. 4 [""[e]vidence is substantial if any reasonable trier of fact could have considered it reasonable, credible, and of solid value""]; *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 386 [""[s]ubstantial evidence" is defined as "enough relevant information and reasonable inferences from this

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6 At the end of the hearing, the probate court asked, "Anything further, Mr. Frappied?" When Frappied started to respond, stating, "I don't understand why it can't be –-," the court interrupted Frappied and stated, "I've made a ruling based on what's been submitted. That's what's happened. And I've explained the basis for my ruling which is all that we need to do. So if there's nothing further, we'll leave the order and I'll make that decision." It does not appear from the transcript that the court really wanted to know if Frappied had "anything further" he wanted to say.

information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached’”’].)

Frappied also confuses substantial evidence with credible evidence. We can review the record for existence of the former, but we cannot review the record to revisit the probate court’s evaluation of the latter. Niles and Frappied submitted conflicting evidence. The court reviewed it all and made a determination that Niles’ evidence was more credible. We may not second-guess that determination. (See *In re Maya L.* (2014) 232 Cal.App.4th 81, 104, fn. 6 [“[a]s a reviewing court, we have no power to revisit the credibility of witness[es] or reweigh the evidence”]; *Carolina Casualty Ins. Co. v. L.M. Ross Law Group, supra*, 212 Cal.App.4th at p. 1192 [“‘“[w]e do not evaluate the credibility of the witnesses or otherwise reweigh the evidence”’”; “‘[r]ather, “we defer to the trier of fact on issues of credibility”’”]; *Jones v. Adams Financial Services* (1999) 71 Cal.App.4th 831, 839 [“[a]s an appellate court, we do not review the evidence for its ‘believability,’” and “[q]uestions of credibility are for the trial court”].) This rule applies where the trial court makes a credibility determination based on declarations as well as oral testimony. (See *United Health Centers of San Joaquin Valley, Inc. v. Superior Court* (2014) 229 Cal.App.4th 63, 74 [“‘“[w]e must accept the trial court’s resolution of disputed facts when supported by substantial evidence,”’” and “[t]his standard applies to judgments based on affidavits or declarations, as well as judgments based on oral testimony”]; *Fininen v. Barlow* (2006) 142 Cal.App.4th 185, 189-190 [“‘the applicable standards of appellate review of a judgment based on affidavits or declarations are the same as for a judgment following oral testimony: We must accept the trial court’s resolution of disputed facts when supported by substantial evidence; we must presume the court found every fact and drew every permissible inference necessary to support its judgment, and defer to its determination of credibility of the witnesses and the weight of the evidence’”].)

Finally, Frappied contends that the probate court’s order should be reversed because public policy favors protecting judgment debtors from losing their homes. He

argues that "[g]iven this strong public policy for a 'liberal construction of the . . . facts' when determining a homestead exemption the trial court had a duty to review all of the evidence submitted by both sides and construing the facts in as favorable a light to [Frappied] as would be reasonable. However, the trial court instead based its decision merely on the insufficient and unreliable evidence proferred by [Niles] and unfairly disregarded [Frappied's] evidence."

It is true that the public policy of homestead exemptions generally protects judgment debtors from loss of their personal residence. (*Webb v. Trippet* (1991) 235 Cal.App.3d 647, 650; see *Becker v. Lindsay* (1976) 16 Cal.3d 188, 193 [courts "must heed the salubrious policy of interpreting the provisions of the homestead exemptions liberally for the protection of the homesteaders from the loss of their homes"]; *Amin v. Khazindar* (2003) 112 Cal.App.4th 582, 588 [public policy of homestead law is to "protect[] the home against creditors of the declarant, thereby preserving the home for the family"]; *Putnam Sand & Gravel Co. v. Albers* (1971) 14 Cal.App.3d 722, 726, fn. 4 [""[h]omestead laws are founded upon considerations of public policy, their purpose being to promote the stability and welfare of the state by encouraging property ownership and independence on the part of the citizen, and by preserving a home where the family may be sheltered and live beyond the reach of economic misfortune,"" and the homestead ""statutes are intended to secure to the householder a home for himself and family, regardless of his financial condition—whether solvent or insolvent—without reference to the number of his creditors, and without any special regard to the extent of the estate or title by which the homestead property may be owned""]). This policy applies, however, only if the judgment debtor actually resides in the property. (See *Webb v. Trippet*, *supra*, 235 Cal.App.3d at p. 652 [although "the fundamental policy behind the homestead exemptions is to protect insolvent debtors and their families from going homeless," a "creditor's interest in receiving payment on an unsatisfied judgment must, at some point, overtake an absent declarant's interest in maintaining a declared homestead exemption"].) The probate court reviewed the evidence, found the evidence submitted by

Niles more credible, and found Frappied did not reside at the Lebec property. We defer to the probate court's findings.

DISPOSITION

The order is affirmed. This court's October 15, 2014 stay of the sale of the property is vacated. Niles is to recover his costs on appeal.

SEGAL, J.

We concur:

PERLUSS, P. J.

ZELON, J.